

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA

IN RE: . Case No. 08-35653 (KRH)  
. .  
CIRCUIT CITY STORES, .  
INC., .  
. .  
. 701 East Broad Street  
. Richmond, VA 23219  
Debtor. .  
. June 8, 2010  
. 2:05 p.m.  
. . . . .

TRANSCRIPT OF OMNIBUS HEARING  
BEFORE HONORABLE KEVIN R. HUENNEKENS  
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: McGuire Woods, LLP  
By: DOUGLAS FOLEY, ESQ.  
ERIN Q. ASHCROFT, ESQ.  
9000 World Trade Center  
101 W. Main Street  
Norfolk, VA 23510  
  
McGuire Woods, LLP  
By: SARAH BECKETT BOEHM, ESQ.  
One James Center  
901 East Cary Street  
Richmond, VA 23219

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(609)586-2311 Fax No. (609) 587-3599

APPEARANCES (Contd'):

For the Debtor: Skadden Arps Slate Meagher & Flom, LLP  
By: GREGG M. GALARDI, ESQ.  
IAN S. FREDERICKS, ESQ.  
One Rodney Square  
Wilmington, DE 19899

Acting General Counsel: By: DEBORAH MILLER

For the Committee: Pachulski, Stang, Ziehl & Jones, LLP  
By: ROBERT J. FEINSTEIN, ESQ.  
780 Third Avenue  
New York, NJ 10017

For PNY: Spotts Fain PC  
By: NEIL E. McCULLAGH, ESQ.  
411 East Franklin Street, Suite 600  
Richmond, VA 23219

For Schimenti  
Construction: LeClair Ryan  
By: KIRK VOGEL, ESQ.  
Riverfront Plaza - East Tower  
951 East Byrd Street - Eighth Floor  
Richmond, VA 23219

For Signature: Christian & Barton, LLP  
By: AUGUST C. EPPS, ESQ.  
909 E. Main Street  
Suite 1200  
Richmond, VA 23219

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1 COURT CLERK: In the matter of Circuit City Stores,  
2 Incorporated, hearing on Items 1 through 32 as set out on  
3 debtors' agenda.

4 MR. FOLEY: Good afternoon, Your Honor, Doug Foley  
5 with McGuire Woods on behalf of the debtors.

6 THE COURT: Good afternoon, Mr. Foley, and I thank  
7 everybody for accommodating the change in schedule that I  
8 needed to make today in this hearing.

9 MR. FOLEY: Absolutely, Your Honor. We appreciate  
10 that and, fortunately we think we will be brief today, as well.

11 Your Honor, with me at counsel table is Gregg Galardi  
12 and Ian Fredericks from Skadden Arps, and Sarah Boehm and Erin  
13 Ashcroft are here from my firm. Also, present in the courtroom  
14 is Katie Bradshaw, who's the Vice President and Controller of  
15 Circuit City, as well as Deborah Miller who's the acting  
16 general counsel.

17 Your Honor, there's 32 items on the agenda today,  
18 Your Honor. Mr. -- Ms. Boehm will be addressing the claims  
19 matters which are items on the agenda, Items 6 through 16. Mr.  
20 Galardi will be addressing matters pertaining to some of the  
21 professional employment applications, as well as the  
22 confirmation issues and the mediation motion that we filed.  
23 Those are Items 24 through 32.

24 I'm advised by the committee which is dealing with  
25 Item Number 23 which is Deloitte Lambert Gaffney (phonetic)

1 motion that they're working on a scheduling order with opposing  
2 counsel with respect to that, and that that matter should be  
3 carried over to the June 24th omnibus hearing date.

4           Your Honor, the rest of the items on the agenda are  
5 either resolved or are being adjourned to a future date. Item  
6 Number 1 which is -- in the adversary proceedings we'll do some  
7 scheduling orders -- but, Item Number 1 which is the  
8 Sennheisser late claim motion, we're pleased to report to the  
9 Court that we were able to resolve that consensually. The  
10 stipulation's been filed. There's been no objections, so that  
11 can be removed from the docket.

12           THE COURT: All right.

13           MR. FOLEY: Item Number 2 which is the Archez motion  
14 to reconsider the 48th omnibus objection to claims, that too  
15 has also been resolved and can be removed from the docket.

16           Items Number 3 and 4, these are the longstanding  
17 motions of Motorola and General Instruments with respect to  
18 compelling payment of 503(b)(9) claims. They have agreed --  
19 they have requested, and we've agreed, to adjourn their motions  
20 until the July 22nd omnibus hearing date at ten.

21           THE COURT: All right.

22           MR. FOLEY: Your Honor, if we could just skip down to  
23 Item Number 17, which is the adversary proceeding that we have  
24 pending against LG. We're still trying to negotiate a global  
25 resolution with LG, so we would ask that that pretrial

1 conference be adjourned until the July 12th hearing date.

2 THE COURT: July 12th?

3 MR. FOLEY: Yes, Your Honor.

4 THE COURT: Okay.

5 MR. FOLEY: Your Honor, Item Number 18. This is our  
6 adversary proceeding against the U.S. Debt Recovery and  
7 Signature. Mr. Epps is here on behalf of Signature, who has  
8 lodged an answer, as well as a response to the default motion.  
9 He has some documentation with respect to the remaining issues  
10 that are -- we raise in the complaint and we're going to talk  
11 over the next couple of weeks about a potential settlement  
12 given the amounts at issue. And so we would ask that the  
13 motion for default, as well as the pretrial conference, be  
14 adjourned until the June 24th hearing date so that we can  
15 hopefully try to resolve the matter before that time.

16 THE COURT: All right.

17 MR. FOLEY: As to USDR, Your Honor, we've already  
18 resolved matters with respect to them in the adversary  
19 proceedings, so the only issue is the issue with Signature.

20 THE COURT: All right.

21 MR. FOLEY: Your Honor, Item Number 19 is our  
22 adversary proceeding against PNY Technologies. Counsel is  
23 here. We need a trial date. We estimate two days for that  
24 trial.

25 MR. McCULLAGH: Good afternoon, Your Honor, Neil

1 McCullagh here for PNY. Your Honor, if we could go -- I think  
2 there could be a considerable amount of discovery that needs to  
3 be done on this one -- I was hoping we could go into the later  
4 part of the year.

5 THE COURT: And you need two days?

6 MR. McCULLAGH: Yes, sir.

7 THE COURT: The Court has November 29 and 30  
8 available.

9 MR. FOLEY: That's fine with us, Your Honor.

10 MR. McCULLAGH: I don't see a conflict.

11 THE COURT: That's a Monday and a Tuesday.

12 MR. McCULLAGH: Okay.

13 THE COURT: And we'll start at ten o'clock on Monday  
14 the 29th. Do you need any special accommodation other than the  
15 Court's regular scheduling order?

16 MR. FOLEY: Regular scheduling order is fine, Your  
17 Honor.

18 THE COURT: All right. The Court will enter its  
19 order then.

20 MR. FOLEY: Thank you, Your Honor. Item Number 20 on  
21 the agenda is our adversary proceeding against Mitsubishi.  
22 We're still in negotiations with them about a potential global  
23 resolution. So, we would ask that the pretrial conference,  
24 with respect to that adversary proceeding, be adjourned until  
25 the July 12th hearing date, Your Honor.

1 THE COURT: All right.

2 MR. FOLEY: Your Honor, Items Number 21 and 22 are  
3 two adversary proceedings involving Circuit City and Schimenti  
4 Construction. Item Number 22 is -- 21 is Schimenti's adversary  
5 proceeding against Circuit City. We have pending in that  
6 adversary proceeding a Rule 12 motion which we originally  
7 scheduled for June 24th. Mr. Perkins, counsel for Schimenti,  
8 requested additional time to respond. We have agreed that  
9 provided they file their response by the July 2nd date, we  
10 could have the motion to dismiss heard on the July 12th hearing  
11 date. And we would ask that the pretrial conference be  
12 continued to that date, by agreement of the parties, so the  
13 Court can consider the Rule 12 motion on the 12th.

14 THE COURT: All right.

15 MR. FOLEY: Your Honor, with respect to Item Number  
16 22, this is Circuit City's adversary proceeding complaint  
17 against Schimenti with respect to preferential transfers. And  
18 the issues, I think, were pretty clean in that, counsel is here  
19 and he can address that, we think that the trial would take no  
20 more than a day. It really involves mostly one payment, so we  
21 would ask that the Court's standard scheduling order be  
22 entered. And we have one-day trial set with respect to that  
23 matter.

24 MR. VOGEL: Good afternoon, Your Honor, Kirk Vogel  
25 with LeClairRyan here on behalf of Schimenti Construction.

1 Your Honor, we propose that the pretrial on this matter be  
2 continued, as well, to the same date as the Schimenti  
3 Construction adversary proceeding.

4 THE COURT: Why?

5 MR. VOGEL: Just for efficiency purposes and to  
6 continue discussions for possible global settlement if  
7 possible.

8 THE COURT: Will be the Court's preference, go ahead  
9 and calendar a trial date, just so that we can get that going.  
10 It's been my experience that by scheduling a trial date that  
11 sort of entices everyone to speak a little bit more clearly  
12 when they're discussing settlement.

13 MR. VOGEL: That's understandable. Yes, sir. That's  
14 fine with us.

15 THE COURT: All right. Let's go ahead and schedule a  
16 date. Is there much discovery that needs to be done in this  
17 matter?

18 MR. FOLEY: Not with respect to the preference  
19 matter, Your Honor.

20 THE COURT: Okay. The Court has Tuesday, September  
21 28 available?

22 MR. FOLEY: That's fine with us, Your Honor.

23 MR. VOGEL: Your Honor, I apologize, I only have a  
24 void date starting in November, if it's possible to start there  
25 if that's a problem.



1 THE COURT: This is The Eastern District of Virginia.  
2 I would have expected you would know better than that.

3 MR. VOGEL: Yes, sir. I apologize and I think we can  
4 work with any date that the Court has to offer.

5 MR. FOLEY: Your Honor, I would suggest that if  
6 counsel could check when he gets back to his office whether  
7 September 28 works.

8 THE COURT: That's what I was going to --

9 MR. FOLEY: If it doesn't then we can bring it up  
10 again on the 24th.

11 THE COURT: If it doesn't, contact the courtroom  
12 deputy and she'll give you an alternative date.

13 MR. FOLEY: Okay.

14 MR. VOGEL: Thank you, Your Honor. I'm sure we can  
15 make that work.

16 THE COURT: All right.

17 MR. VOGEL: Thank you.

18 MR. FOLEY: Thanks. Your Honor, that leaves Items 6  
19 through 16, which Ms. Boehm will address, and Items 5 through  
20 24 through 32 which Mr. Galardi will address.

21 THE COURT: All right. Thank you.

22 MS. BOEHM: Good afternoon, Your Honor. Sarah Boehm  
23 on behalf of the debtors.

24 Item 6 on the agenda is the 19th omnibus objection  
25 which was set for a continued status hearing today, solely with

1 respect to Inland U.S. Management, LLC and Inland Continental  
2 Property Management Corporation. These are landlord claims  
3 that are being worked by a location. We have agreed to adjourn  
4 this matter to June 24th for further status at that time, as  
5 they continue to work through the -- all claims for that  
6 location.

7 THE COURT: All right. To be continued to June 24.

8 MS. BOEHM: Item 7 is the 20th omnibus objection,  
9 which was continued today for a status hearing on Averatech and  
10 Trigem's claim which is also Item 8 in the 48th omnibus  
11 objection. They had claim objections in Omni 20 and Omni 48  
12 and we are pleased to report that that matter has been settled  
13 in principal, and subject to completing the settlement  
14 documentation we have agreed to adjourn for further status on  
15 July 12th at 10 a.m.

16 THE COURT: July 12th. And what was the other  
17 matter, it's also on the 48th?

18 MS. BOEHM: Items 7 and 8.

19 THE COURT: All right. Very good.

20 MS. BOEHM: Omni 20 and Omni 48.

21 THE COURT: All right. Thank you.

22 MS. BOEHM: Item Number 9 is the debtors' 71st  
23 omnibus objection. This is up for the first time today. This  
24 with respect to certain mis-classified non-goods under  
25 503(b)(9). It included 13 claims that we received no

1 responses. We would like to submit an order reclassifying all  
2 13 of those claims.

3 THE COURT: All right. That's acceptable.

4 MS. BOEHM: Item 10 is the 72nd omnibus objection  
5 which is the disallowance of certain duplicative and amended  
6 claims. This included 33 duplicative claims and 50 amended  
7 claims. We received three responses. We've been able to  
8 resolve two of them to date, and we would just like to adjourn  
9 the one remaining unresolved claim to July 22nd at ten o'clock  
10 for further status.

11 THE COURT: And who is that?

12 MS. BOEHM: That is -- it is a pro se claimant, Amad  
13 Paul Whitney.

14 THE COURT: All right. Very good.

15 MS. BOEHM: Item 11 is the debtors' of 73rd omnibus  
16 objection which seeks to reclassify unsecured claims filed as  
17 503(b)(9) claims for goods received by the debtors outside of  
18 20 days. This included 12 claims. We received zero responses  
19 and we would propose to submit an order reclassifying all 12  
20 claims.

21 THE COURT: All right.

22 MS. BOEHM: Item 12 is the 74th omnibus objection  
23 which seeks the reclassification of certain alleged admin  
24 expenses on account of employee obligations. This included 35  
25 claims and we have received three responses that we're seeking

1 to adjourn for further status to July 22nd at 10 a.m.

2 THE COURT: All right.

3 MS. BOEHM: And we would propose to submit an order  
4 reclassifying any claim for which no response was filed.

5 THE COURT: That would be fine.

6 MS. BOEHM: Item 13 is the 75th omnibus objection  
7 which is the reclassification of certain claims under the  
8 benefit restoration plan. This included eight claims. We  
9 received no responses, and we would propose to submit an order  
10 reclassifying all late claims.

11 THE COURT: All right.

12 MS. BOEHM: Item 14 is the 76th omnibus objection  
13 which seeks the disallowance of certain mis-classified  
14 administrative claims. This included nine claims. We received  
15 two responses. One has been resolved and we would propose to  
16 adjourn the one remaining claim of a pro se claimant -- I'm  
17 sorry, it's not a pro se claimant, it's a litigation claimant,  
18 Yu Liang Lee, to July 22nd at 10 a.m. for further status.

19 THE COURT: All right. That will be continued. And  
20 you'll submit an order with regard to the others.

21 MS. BOEHM: Item 15 is the 77th omnibus objection  
22 that is the disallowance of certain no-liability claims. This  
23 included nine administrative claims. We received no responses.  
24 We propose to submit an order disallowing all nine claims.

25 THE COURT: That would be fine. The Court will look

1 forward to your order.

2 MS. BOEHM: Item 16 is the 78th omnibus objection  
3 which seeks a disallowance of certain late claims. This  
4 included 13 claims that were filed after the first  
5 administrative expense bar date. We received three responses  
6 that we propose to adjourn to July 22nd at 10 a.m. for further  
7 status and submit an order disallowing the other ten claims.

8 THE COURT: July 22?

9 MS. BOEHM: Yes.

10 THE COURT: All right. Very good.

11 MS. BOEHM: That's all I have, Your Honor.

12 THE COURT: All right. Thank you.

13 MS. BOEHM: Thank you.

14 MR. GALARDI: Good afternoon, Your Honor. For the  
15 record Gregg Galardi on behalf of the debtors.

16 Your Honor, I'm going to handle matters 525 and then  
17 I guess it's the rest is (indiscernible) as well as one of the  
18 claims objections. Your Honor, first, why don't I go to really  
19 beyond this objection which is Number 37 on the agenda, which  
20 is the Texas taxing authorities, as that's not wrapped up in  
21 many of the other matters.

22 THE COURT: All right.

23 MR. GALARDI: That's Matter 24 on the agenda, Your  
24 Honor. Your Honor --

25 THE COURT: Number 24, okay.

1 MR. GALARDI: Matter 24 was the debtors' 37th omnibus  
2 objection to claims. As Your Honor may know, we objected to  
3 and sought a reduction of certain personal property tax claims,  
4 including taxing authorities from Texas, Henrico County and  
5 other counties based upon, one, a change in the law. We had  
6 filed briefs. That motion had been -- that objection had been  
7 on file. Each and every taxing authority opposed that relief.  
8 And it was previously scheduled for hearing, I believe it was  
9 at least one or two omnibus hearings ago.

10 Since then, we had entered into conversations with  
11 the parties regarding resolution of those tax claims and I'm  
12 pleased to say that with respect to -- I think, Ms. Weller and  
13 Mr. Reed are on the phone, as well as, Henrico's counsel is  
14 either here or on the phone -- we had resolved their objection  
15 and our response, coming up with a compromise, and we have  
16 submitted specific orders with respect to those settlements  
17 which go back to when we sold the assets they had put in  
18 estimated claims we had money in reserve. I'm pleased to say  
19 that we're settling all of these claims, (1) for less than the  
20 amount that they filed those claims, (2) for less than the  
21 amount of the reserves of those claims.

22 And, in addition, it was critical to the taxing  
23 authorities because of their own fiscal budgets, the taxing  
24 authorities insisted that if we were going to settle and  
25 compromise those claims, that we'd be authorized to pay those

1 claims, immediately. Some of those claims may be secured  
2 claims, if Your Honor may be familiar a lot of the Texas taxing  
3 authorities have secured claims and we -- I've fought that  
4 fight in the past.

5 In any event, these are the sorts of claims that  
6 penalties and interest generally accrue even post-bankruptcy  
7 for failure to pay. And then many of these were asserted as  
8 administrative claims. So, as part of the settlement what was  
9 critical to the taxing authorities that we've so far settled  
10 with, and we haven't settled all of them, but will be the  
11 format for going forward with a number of the other ones that  
12 are still outstanding, was that we would fix and reduce the  
13 claim for the tax amount. That there would be certain  
14 compromises, and not every jurisdiction is the same, but part  
15 of the compromises were on the interest and penalties that  
16 would have accrued post-petition as an administrative claim.

17 There were certain issues with respect to our appeal  
18 rights and whether they were waived or not waived. If you've  
19 looked at the briefs, those are all resolved. And, critically,  
20 that we would seek to be able to pay as soon as Your Honor  
21 enters the order, pay to these counties, these taxing agencies  
22 or authorities, immediately make payment on those, so as to  
23 stop an accrual of further interest penalties that were  
24 accruing every day or every month at a certain rate.

25 We would ask Your Honor to approve those orders that

1 settle those claims and we understand that in this instance we  
2 are outside of a plan paying certain claims prior to the  
3 effective date of a plan. There were concerns raised by the  
4 committee with respect to that, which I'll get to in a second,  
5 but that we believed that it was, nonetheless, because of the  
6 way in which they accrue interest and penalties on a  
7 post-petition base in these administrative claims, and since  
8 these are ordinary taxes in that context and because your DIP  
9 order already provided us with authority to make the payments  
10 once we settled these amounts, we thought it was prudent and  
11 advisable for the unsecured creditors to make the payment  
12 before further interest and penalties accrue.

13           So, we would ask Your Honor to approve that. We  
14 understand that the committee has no objection. But, Your  
15 Honor, I did want to note that one of the things that we are,  
16 in fact, doing and this will end up going into some of the  
17 post-confirmation matters, but I did want to let Your Honor  
18 know that we are filing -- in fact, we filed immediately before  
19 this hearing -- a motion to pay administrative claims, the  
20 ordinary course administrative claims, such that we've been  
21 allowed, say 503(b)(9) claims, we have some of those  
22 settlements, to pay those prior to an effective date of the  
23 plan.

24           Again, that some -- maybe somewhat unusual relief,  
25 but in this instance given what we make on money anyway, and



1 given where we are, and given the delays that we have had with  
2 respect to the plan, we and the committee discussed the issue  
3 and we've agreed to file that motion, which will be on for June  
4 24th. We're not asking Your Honor to rule on that matter, but  
5 I can't say that it is not related somewhat to this, but I  
6 don't need to go into the details. We think this relief stands  
7 on its own. We have filed the motion. You'll see that cross  
8 your desk. We'll have that motion heard on the 24th.

9           The debtors have importantly agreed not to withdraw  
10 that motion. It is a motion that is supported by the  
11 creditor's committee. And with that, we would ask Your Honor  
12 to approve the settlements with respect to the personal  
13 property taxes.

14           Ms. Katie Bradshaw is in the courtroom today and  
15 could verify any of the facts or proffer any of the evidence  
16 with respect to what I've just related to Your Honor. With  
17 respect to the settlements of the amount, we think it's in the  
18 best interest of the estate and we have received no objections.  
19 I think the Texas taxing authorities may be on and counsel for  
20 Henrico may be here.

21           THE COURT: Which are the ones, Mr. Galardi, that you  
22 are settling and which are the ones that remain open?

23           MR. GALARDI: I was afraid you were going to ask me  
24 those specific letters, so let me see if I can get that. It's  
25 on the exhibit.

1           There's an exhibit attached to the agenda Your Honor  
2 and which refers to 37 and it's --

3           THE COURT: This is Exhibit B?

4           MR. GALARDI: Well, actually, I have it as Exhibit A  
5 on mine, but it's Exhibit A and then there are -- it lists,  
6 starting on first page of that exhibit, you'll see Omnibus  
7 Objection 37 listed on the left side, and --

8           THE COURT: Oh, yes. Okay. This is the same one I  
9 was using with previous --

10          MR. GALARDI: Correct. And then it starts with  
11 Boulder and it goes all the way for quite a number of pages,  
12 all the way through, the last one being Polk County, Florida on  
13 Page 11. So, it actually has 10 pages of objections that we  
14 have resolved. That those --

15          UNIDENTIFIED SPEAKER: They haven't all been  
16 resolved. Some of them were adjourned.

17          MR. GALARDI: Oh, they haven't -- some of them were  
18 adjourned. I'm sorry, Your Honor. The one that's been  
19 resolved all the way to Page 9, it looks like, and then top of  
20 10, they're resolved, all the way down to -- it looks like the  
21 Tarrant County is the last one resolved. And then we begin,  
22 again, with Allen County, Indiana, is being adjourned to the  
23 July 12th. Gaston County, Placer County and Polk County,  
24 Florida, those are the ones that are adjourned. But, the ones  
25 prior to that have been resolved.

1 THE COURT: All right. Very good. Does any party  
2 wish to be heard in connection with the debtors' motion to  
3 approve the settlements in these matters?

4 MR. FEINSTEIN: Briefly, Your Honor, Robert Feinstein  
5 Pachulski, Stang, Ziehl & Jones for the official creditor's  
6 committee.

7 Your Honor, as the agenda noted, the committee had  
8 expressed concerns. We had been presented with a settlement --  
9 a proposed settlement with Henrico County in recent days and  
10 we're asked the committee's view and the response was, that we  
11 had some concern about selectively paying allowed  
12 administrative claimants. And our response to the debtor was,  
13 either pay none of them or pay all of them, but let's not, you  
14 know, take one at a time.

15 So, the debtors' response was to file the motion that  
16 was filed today, which we were supportive of and on that basis  
17 we support the settlements that are on the calendar today.  
18 Thank you.

19 THE COURT: All right. Does any other party wish to  
20 be heard? Ms. South, you wish to be heard?

21 MS. SOUTH: No, Your Honor.

22 THE COURT: All right. Thank you. All right, Mr.  
23 Galardi, the Court will approve the settlements and grant the  
24 motions that you've filed to resolve those matters.

25 MR. GALARDI: Thank you, Your Honor.

1 THE COURT: And we'll adjourn the others to the date  
2 indicated, July 12 it looks like.

3 MR. GALARDI: Thank you, Your Honor. It's also --  
4 Your Honor, we could hand up the notice there -- the ones that  
5 are, in fact, agreed are attached to that notice, if that  
6 helps, as well.

7 THE COURT: All right.

8 MR. GALARDI: Thank you. Your Honor, then I'd like  
9 to turn to Matters 5 and 25, though they're not my motions.  
10 What I think is, it's best to take them in the context.  
11 Although, I don't want to suggest that they are necessarily  
12 related to confirmation matters, they are matters that we are  
13 working with the committee with regard to.

14 Your Honor, first there is the motion to remove the  
15 cap on the Gowlings Law Firm which is Canadian counsel for the  
16 official committee, that's Number 5. There is then Matter 25,  
17 I believe is the number, that the committee filed a motion to  
18 retain the counsel of Arsene Taxand as Special French counsel.  
19 Both of these matters the debtors objected to, and in the  
20 context of, I guess we'll say last week's breakup for a short  
21 period of time on the plans. We had filed an objection. We've  
22 put them in the hopper of things that we're discussing with the  
23 committees now as a consensual way to resolve that.

24 Which then makes --lets me turn to the confirmation  
25 matters, Your Honor. To give a status update, we had filed --

1 the committee had filed an alternative plan last week. We had  
2 filed a motion for expedited relief and we're going to seek  
3 mediation today. We have had conversations, myself and Mr.  
4 Pachulski of the Pachulski Firm, as well as other counsels,  
5 trying to resolve our differences, and actually avoid both  
6 dueling plans and even the cost of mediation. I would say  
7 we're cautiously optimistic in what we would come to the Court  
8 today with respect to 525 and confirmation matters and in  
9 particular that mediation motion filed by the debtors, is to  
10 ask Your Honor if you had time available on June 16th.

11 What we would propose to do is to push those matters  
12 over to June 16th with the idea, hopefully, that we can get a  
13 consensual resolution and not really have to provide -- have to  
14 be in front of Your Honor with respect to those matters at that  
15 time. The hope is that we will, in fact, be able to mediate  
16 our own differences without a third party on the plan issues.  
17 Whether that will also resolve the professional fee issues is  
18 something that is an open question, but we thought it would be  
19 better because we've actually made some progress over the  
20 weekend and we're cautiously optimistic that we can resolve  
21 them ourselves without the need for a third party and to do so  
22 by the 16th. In fact, we've exchanged documents today with  
23 respect to that and hope to have cause and do that.

24 So, we -- but, should things break down, going back  
25 to the administrative claim motion, there is a need to move

1 forward as quickly as possible. So, instead of waiting until  
2 the 24th, which is two weeks, which always builds in another  
3 two weeks, we thought maybe if Your Honor had time on that  
4 16th, it would be good to schedule time now with the hope that  
5 we don't use it at all, or just give Your Honor a status report  
6 at that point.

7 THE COURT: All right. Why the 16th?

8 MR. GALARDI: Well, I guess there's a couple reasons.  
9 I know Mr. Feinstein's calendar is a little busy and mine is  
10 busy on the 14th and 15th, so we just thought that that was  
11 essentially seven days or eight days. I know Your Honor had  
12 some openings on the 15th, but I'm unfortunately at a partner's  
13 meeting. I'm wondering if the 16th works.

14 THE COURT: My condolences.

15 (Laughter)

16 MR. GALARDI: I feel the same. I actually offered to  
17 come, notwithstanding, but I think there was a little bit of  
18 disagreement with my partners.

19 THE COURT: The -- how much time do you think you're  
20 going to need on the 16th?

21 MR. FEINSTEIN: I would -- no. You probably can  
22 confirm to this, Your Honor, I would say 60 to 90 minutes. We  
23 will adjourn Arsene, the retention application until then. If  
24 we haven't resolved our differences we may go forward in that,  
25 we may ask for that to be mediated, but we should probably

1 allow ourselves enough time to deal with that and the plan  
2 issues.

3 THE COURT: All right. Hold to a higher authority.

4 MR. FEINSTEIN: The higher authority is mentioned,  
5 you might have a window there, Your Honor.

6 THE COURT: Okay, we've got Mr. Heimann's out that  
7 day. Do you want to do it in the morning? I don't have an  
8 updated calendar, so that's why you have to do this.

9 MR. FEINSTEIN: I will also note that I think you and  
10 I have a call on that claims matter that we could probably move  
11 around, too.

12 THE COURT: All right. So, I can accommodate that,  
13 so let's set it for two o'clock on the 16th.

14 MR. GALARDI: That's much appreciated, Your Honor.  
15 And to just give Your Honor an update, I think with respect to  
16 going forward on confirmation at that time, what I would do is  
17 expect if we have resolved it, to set dates for the  
18 confirmation hearing. Again, we still are having our tax  
19 issues, as I've mentioned, and the Canadian issues which is  
20 partially why the Gowlings cap is being increased and why  
21 Arsene. But, to try and resolve those matters and then we'll  
22 actually be able to give you even a further update at that time  
23 on confirmation. So, I don't want to schedule a new  
24 confirmation date at this point, but I think the 16th will be  
25 our target for doing so.

1 THE COURT: All right. With respect to the French  
2 Counsel -- tax counsel issue, is that something that would  
3 inure generally to the benefit of the estate, so we just need  
4 to engage one tax counsel in France, or what is the issue  
5 there?

6 MR. GALARDI: Well, let's answer the first question.  
7 Yes, having tax counsel in France that reviews this inures to  
8 the benefit of the estate. There is already French -- again,  
9 the French subsidiary that's causing us, I'll call it agida, to  
10 think of a better word, there is French counsel retained by the  
11 Canadian entity because that is a Canadian sub.

12 THE COURT: That's right. Okay.

13 MR. GALARDI: The committee has Canadian counsel, but  
14 there is a unique issue of dissolution in France, so they're  
15 wanting their counsel and, obviously, Skadden has French  
16 counsel in its French office. So, it really comes to, how do  
17 we coordinate what might be three or two counsel, as opposed to  
18 just one and what's the benefit to the estate?

19 We have suggested the French counsel come in for the  
20 committee. We haven't opposed that. Really, it's just a --  
21 it's an economic budget matter and hope to resolve that.

22 THE COURT: All right. Very good. Well, I hope that  
23 you'll have all these issues resolved by the 16th and then we  
24 can get this moving and get it back on track.

25 MR. GALARDI: Yes. I agree, Your Honor. I think,



1 actually, notwithstanding what I'll call a DIP, we're still,  
2 you know, a sort of break up for a short period of time. I  
3 think everything is still moving. I don't think it's actually  
4 going to delay things because tax issues and other things are  
5 moving forward, but that's at least my view of it, so. And  
6 hopefully the committee will agree when we get back on the  
7 16th.

8 THE COURT: All right. Mr. Feinstein?

9 MR. FEINSTEIN: Yes, Your Honor. We're in basic  
10 agreement with -- when the -- in the wake of our filing of our  
11 own plan, the mediation motion. There have been the beginnings  
12 of a constructive dialog. We think the time will be well-spent  
13 in the run up to the 16th. We hope that they can be resolved  
14 by then. If not, we'll be back in front of you in a week's  
15 time to take a different direction, but our hope is that this  
16 can all be resolved, and that would include not just the plan  
17 matters, but a variety of professional retention and  
18 compensation matters.

19 THE COURT: So, the filing of the competing plan had  
20 the desired effect?

21 MR. FEINSTEIN: Well, the log jam seems to be open,  
22 Your Honor, and I think both sides are making concessions and  
23 talking.

24 THE COURT: Excellent. Okay. Well, I'm encouraged  
25 by that.

1 MR. FEINSTEIN: Thank you.

2 THE COURT: All right. Well --

3 MR. GALARDI: I will bite my tongue on the desired  
4 effect comment.

5 THE COURT: I understand.

6 MR. GALARDI: So, that really concludes our matters  
7 for today, Your Honor. I appreciate your time and making time  
8 on the 16th.

9 THE COURT: All right. I'll see you back around the  
10 16th.

11 MR. GALARDI: Thank you.

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14 C E R T I F I C A T I O N

15 I, ANNE MARIE DeANGELO, court approved transcriber,  
16 certify that the foregoing is a correct transcript from the  
17 official electronic sound recording of the proceedings in the  
18 above-entitled matter, and to the best of my ability.

19

20 /s/ Annemarie DeAngelo

21 ANNEMARIE DeANGELO

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